

COMMUNITY AFFAIRS

Division Of Codes And Standards

Uniform Construction Code

Stop Construction Orders

Proposed Amendments: N.J.A.C. 5:23-2.18, 2.31 and 4.5

Authorized by: Charles A. Richman, Acting Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-124

Proposal Number: PRN 2005-

Calendar: See Summary below for explanation of exception to calendar requirement.

Submit written comments by: April 7, 2006 to:

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CHARLES A. RICHMAN, Acting Commissioner

The agency proposal follows:

Summary

These proposed amendments would allow a construction official to issue and enforce a stop construction order for an entire development, upon a finding of the existence of pattern or practice of violations of a similar nature, affecting framing, fire safety or structural safety, and conditioning relief from that order upon filing of, and compliance with, an acceptable plan of correction. The proposed use of this sanction is limited to residential development (single-family residences, townhouses and condominiums) because the Department has not seen evidence of significant problems in other types of construction. These proposed amendments are intended to give the construction official an effective enforcement tool to use in cases where there is an apparent lack of quality control or qualified supervision in residential development. The rule can be extended to other types of construction in the future if it is determined that this is warranted.

The proposed amendments to N.J.A.C. 5:23-2.31(d) describe the conditions for issuance of a development-wide stop construction order and the conditions for relief from that order. The proposed amendments to N.J.A.C. 5:23-2.18 state clearly that a request for an inspection is a representation on the part of the responsible person in charge of work that the project is ready for inspection. Inspections for the purpose of verifying compliance with the code cannot be used as a substitute for quality control in construction. Finally, amendments are proposed at N.J.A.C. 5:23-4.5 to address the development-wide stop construction order in the duties of the construction official and of the subcode official. Because the issuance of a development-wide stop construction order is an extraordinary enforcement action, this duty is being assigned to the construction official, upon recommendation of the appropriate subcode official.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment would have a positive social impact in that it would enhance the ability of local enforcing agencies to correct and prevent code violations during construction, thus protecting homeowners against defects that might become evident only after the buildings have been sold and occupied.

Economic Impact

The Department anticipates that the proposed amendment would have a positive economic impact for purchasers of new homes in that it would give code officials the ability to stop construction in a development if it becomes evident that there is a pattern of repeated code violations affecting framing, fire safety or structural safety and to require filing of, and compliance with, a plan of correction. Correction and prevention of code violations is the most effective way of avoiding defects later.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Department does not anticipate that any jobs will be created or lost as a result of these proposed amendments.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have an impact on the agricultural industry.

Regulatory Flexibility Statement

The proposed amendment would impose a reporting and compliance requirement on “small businesses,” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. in that many builders meet this definition. However, such reporting and compliance are necessary in order to protect the homebuying public if there is a pattern of repeated code violations in a development. Developers may be required to hire qualified supervisors and other professionals in order to properly implement a plan of correction.

Smart Growth Impact

The Department does not expect that it would have any impact upon either achievement of "smart growth" or implementation of the State Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-2.18 Inspections

(a) – (b) (No change.)

(c) Notice for inspection:

1. The owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the construction official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. **This notice shall represent an attestation on the part of the owner, other than single-family owner- occupants performing their own work, or other responsible person in charge of work, that the work has been completed in conformance with the code and is ready for inspection**

2. Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) – (h) (No change.)

5:23-2.31 Compliance

(a)-(c) (No change.)

(d) Stop construction order:

1. If the construction of a structure or building is being undertaken contrary to the provisions of the regulations, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the reasons for such order and the conditions under which construction may be resumed and which shall be given to the owner or

the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction.

2. If, at the time of inspections requested pursuant to N.J.A.C. 5:23-2.18(c), a pattern or practice is identified of the same code violation(s) occurring in most or all of the dwelling units inspected within a housing development, affecting framing, fire safety or structural safety, the construction official may issue a stop construction order for all buildings within the development. Relief from any such stop construction order may be conditioned upon submission to the enforcing agency of an acceptable supervision and management plan. This plan shall include the institution of quality controls to ensure that the pattern of violations does not continue and the identification of qualified personnel to implement the plan.

3. No person shall continue, or cause to allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order.

4. If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of, any other remedies provided by [the regulations,] law [or ordinance].

(e) (No change.)

5:23-4.5 Municipal enforcing agencies—administration and enforcement

(a) – (g) (No change.)

(h) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.– x. (No change.)

xi. Record stop work orders, upon notification of the appropriate subcode official **or, in the case of a development-wide stop work order, issue the stop work order upon recommendation of the appropriate subcode official;**

xii. – xxi. (No change.)

2. – 3. (No change.)

(i) Duties of subcode officials:

1. The subcode official shall enforce the regulations and:

i.– viii. (No change.)

ix. Issue stop work orders in the name of the enforcing agency and notify the construction official of same **or, in the case of a development-wide stop work order, make a recommendation to the construction official for issuance of the order;**

x. – xv. (No change.)

2. (No change.)

(j) (No change.)